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MARKED UP VERSION SHOWING CHANGES MADE:

Please amend claims 17-19, 23-24 and 29 as follows:

18. (Twice Amended). Asexually reproduced progeny of the plant of claim 17.
18. (Twice Amended). The asexually reproduced progeny of claim 17 wherein said asexual progeny is a cutting.
19. (Twice Amended). An interspecific impatiens plant comprising a trailing habit, wherein said plant has a pedigree that includes plant 2245B or asexually reproduced progeny of plant 2245B [thereof].
23. (Amended). Asexually reproduced progeny of the plant of claim 19.
24. (Amended). The asexually reproduced progeny of claim 23 wherein said asexually reproduced progeny is a cutting.
29. (Twice Amended). Asexually reproduced progeny produced from the trailing interspecific impatiens plant produced by the process of claim 25.

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REMARKS

Reconsideration of the above-identified application in view of the foregoing amendments and following arguments is respectfully requested.

Claims have been amended. No new matter has been added as a result of these amendments.

Claim Rejections – Double Patenting

The Examiner rejected claims 19-22 under the judicially created doctrine of obviousness-type double patenting and being unpatentable over claim 1 of U.S. Plant Patent No. 12,588. In view of this rejection, Applicant herewith encloses a terminal disclaimer and requisite fee. In view of the submission of this terminal disclaimer, Applicant submits that this rejection should now be withdrawn.

Claim Rejections – 35 U.S.C. Section 112

Claims 13-30 are rejected under 35 U.S.C. Section 112, first paragraph as not being described in the specification in such a way to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Applicant respectfully traverse this rejection.

Applicant submits that the specification adequately describes how to produce a trailing interspecific impatiens plant and hence provides a sufficient written description to enable one skilled in the art to which it pertains to make and/or use the invention. The Examiner has not provided any evidence that one skilled in the art would not be able to make a trailing interspecific impatiens plant using the hereinbefore claimed methods. Therefore, this rejection should be withdrawn.

Enablement – 35 U.S.C. Section 112, First Paragraph

Claims 19-24 are rejected under 35 U.S.C. Section 112, first paragraph as not being enabled by the specification. Specifically, the Examiner states that seeds of 2245B need to be deposited with a recognized depository pursuant to the Budapest Treaty.

Applicants wish to hold making such a deposit in abeyance until receipt from the Examiner of notification of allowable subject matter.

Claim Rejections – 35 U.S.C. Section 112, Second Paragraph

Claims 17-19 and 29 are rejected as being indefinite in view of the recitation "asexual reproduced progeny". The Examiner stated that this phrase was unclear and could be obviated by stating "asexually reproduced progeny". Applicant thanks the Examiner for this suggestion. Applicant has amended the claims as suggested by the Examiner.

Claim 19 was rejected as being unclear and claim 23-24 were rejected for reciting "asexual progeny". Claim 19 has been amended to make this claim more clear. Claims 23-24 have been amended to recite "asexually reproduced progeny".

In view of the aforementioned amendments and arguments, Applicant submits that claims 13-30 are now in condition for allowance.

If any additional fees are incurred as a result of the filing of this paper, authorization is given to charge deposit account number 23-0785.

Respectfully submitted,

By: 

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CERTIFICATE OF MAILING

I hereby certify that this Amendment is being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Commissioner for Patents, Washington D.C., 20231 on a August 19, 2002.

